

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Acceleration of Broadband Deployment:)	WC Docket No. 11-59
Expanding the Reach and Reducing the Cost of)	
Broadband Deployment by Improving Policies)	
Regarding Public Rights of Way and Wireless)	
Facilities Siting)	

Comments of Orange County, Florida

In response to the Federal Communications Commission's Notice of Inquiry, released April 7, 2011, associated with the proceedings in this matter, comments were filed by NextG Networks, Inc. ("NextG") which included certain allegations against Orange County, Florida, and its processing of NextG's requests for certain permits. (*See* pg. 9 of "Comments of NextG Networks, Inc.," dated July 18, 2011). Accordingly, Orange County, Florida, by and through the undersigned, files its reply to the same.

I. Introduction.

The State of Florida has not opted to independently regulate the terms and conditions of pole attachments or other services for wireless communications service providers, as permitted by 47 USC §224. Instead, the State of Florida relies on the regulations set forth in the Federal Telecommunications Act (the "FTA"). NextG asked the Florida Public Service Commission (the "PSC") to designate NextG as a "utility" provider. The PSC granted NextG's request, but the Florida Supreme Court quashed the PSC's Order, denying the PSC's authority to regulate pole attachment agreements. Additionally, Florida Statutes specifically prohibit the PSC from regulating any wireless communication services.

It should be noted that NextG submitted a Domestic Section 214 application to the Federal Communications Commission (the "FCC") wherein NextG describes itself as a provider of "RF Transport telecommunication services via distributed antenna systems primarily to wireless carriers in multiple states." NextG's application was granted by the Wireline Competition Bureau (*see* WC Docket No.: 09-94, July 13, 2009).

II. Facts

In February, 2010, NextG applied to Orange County, Florida ("Orange County") for access to public rights of way in unincorporated areas of the county for purposes of installing a *Distributed Antenna System* ("DAS"). NextG sought to install a DAS network of seventy (70) antennas and approximately twenty (20) miles of fiber optic cable trunk line, covering approximately 17.7 square miles.

Orange County encountered various obstacles in its efforts to process NextG's applications in a timely manner. Despite the aforementioned Florida Supreme Court decision, the Florida Statutes, and Orange County's rights under the FTA, NextG represented to Orange County that it had been deemed a "utility" by the PSC and that Orange County had no choice but to immediately grant any and all permit requests. After Orange County questioned NextG's representation, NextG changed its stance, insisting that it was a telecommunications provider. This and other inconsistencies in NextG's position led Orange County to contact the FCC for guidance. During various telephone conversations with FCC staff, including Claudia Pabo (FCC staff attorney), John Real, Jeff Steinberg, and Jane Jackson (of the Wireless Bureau dealing with Domestic 214 Authorization), it was confirmed that Orange County was exempt, under the FTA, from the requirement to allow attachment to our poles, but that this exemption did not extend to NextG's right to use the public rights of way. FCC legal staff further confirmed that use of the public rights of way was governed by 47 USC § 332(c)(7). Additionally, Orange County was advised regarding the provisions and requirements associated with any denial of permit applications; the consequences of any failure to act on NextG's applications within 30 days; and confirmation of the fact that NextG did possess a Domestic 214.

In the meantime, Orange County continued to process NextG's applications in good faith and in full accordance with applicable law. In so doing, Orange County investigated and timely addressed various problems, such as conflicts with existing utilities, deficiencies within the NextG applications themselves, and inaccurate or incomplete information provided by NextG. Orange County worked diligently to resolve all of these issues.

In accordance with its usual standards and practices, Orange County advised NextG to co-locate its facilities on existing utility poles. Only then did Orange County learn that NextG had not yet obtained, nor even begun the process of obtaining, co-location agreements with any utility pole owners. In an effort to expedite the process, Orange County coordinated meetings for the benefit of NextG with the existing utility pole owners -- Orlando Utilities Commission and Progress Energy-Florida.

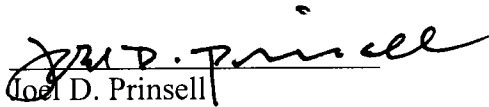
During this process, Orange County began to receive citizen complaints about the proposed installations within the public rights of way. In accordance with Orange County practices, two community meetings were scheduled and held. Ahead of the meetings, informational flyers were distributed to all affected residents. Before and after the meetings, Orange County continued to process NextG's applications. At no time did Orange County place any administrative "hold" on issuance of permits.

Also, unbeknownst to Orange County (and prior to any contact with Orange County), NextG had apparently entered into private contracts with wireless communications providers, and faced deadlines for performance of its obligations under those contracts. Orange County diligently accepted and processed NextG's applications, and ultimately issued permits. Despite NextG's efforts to impose its unilateral deadlines on Orange County staff, Orange County could not ignore safety issues, public awareness obligations, and legal requirements before complying with NextG's demands.

III. Conclusion.

In spite of all of the circumstances, Orange County acted appropriately, expeditiously, and in good faith in processing NextG's applications for permits. NextG's approval process could have been expedited, had NextG represented itself honestly and filed accurate and complete applications from the start. Moreover, Orange County submits that NextG should have had co-location agreements in place at the outset. NextG and similar providers would be well served to begin the permitting process prior to entering into private service contracts. Orange County also submits that the FCC guidelines in place today are adequate and effective, provided that companies such as NextG act accordingly and in good faith.

Respectfully submitted this
30th day of September, 2011


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